Cooperative Agreement
Upper Yellowstone River
River Corridor Management Planning Process

This Cooperative Agreement, hereinafter known as "Agreement," defines the roles and relationships between the State of Montana, Department of Environmental Quality, Planning Prevention and Assistance Division (PO Box 200901, Helena, MT 59620-0901), State of Montana, Department of Natural Resources and Conservation, Water Resources Division (PO Box 201601, Helena, MT 59620-1601), and the U.S. Army Corps, Regulatory Branch, 106 S. 15th, Omaha, NE, 68102, hereinafter, collectively referred to as the "Lead Agencies", and the City of Livingston (414 East Callender, Livingston, MT 59047), Park County (414 East Callender, Livingston, MT 59047), and the Park Conservation District (5242 Highway 89 South, Livingston, MT 59047-9611) hereinafter, collectively referred to as the "Cooperating Agencies".

I. Purpose

A. The purpose of this Agreement is to define the responsibilities and commitments of the Lead Agencies with respect to the preparation of Cumulative Effects Assessment (CEA), and any subsequent regulatory program modifications thereof (e.g., TMDL/WQRP, §404, §310, FIRM adoption, etc.). In addition, this Agreement documents the obligations of the Lead and Cooperating Agencies to cooperate and coordinate with the Governor's Upper Yellowstone River Task Force and its Technical Advisory Committee. It also identifies the scientific work products upon which the CEA will be based. This Agreement does not address the substantive content of the CEA nor any of the scientific work, but rather anticipates that both will be the subject of significant discussion, which will occur pursuant to this Agreement. None of the commitments contained herein constitutes delegation or assignment of an individual agency's contracting, regulatory or other statutory authorities. In order to maximize availability of resources, facilitate public involvement, expedite interagency review, avoid duplication of effort, and implement to the fullest extent possible the Task Force's anticipated recommendations concerning river corridor management, the Lead Agencies have mutually consented to develop and establish this Agreement.

II. Background

A. In 1997 the Governor of Montana appointed the Upper Yellowstone River Task Force (Task Force) to address problems arising from the Yellowstone River floods of 1996 and 1997 (see Executive Order 21-01). An overall goal of the Task Force is to develop a set of publicly supported river corridor management recommendations that address potential cumulative effects of river channel modification, floodplain development, and natural events on the human community and riparian ecosystem.

B. The City of Livingston enforces local floodplain and other land use regulation within the City Limits. The purpose of these regulations is to ensure that development occurs in an efficient manner, which avoids unnecessary risk to life and property due to natural hazards including flooding.

C. Park County is responsible for adoption of flood insurance rate maps (FIRMs) within its jurisdiction and enforcing the County's floodplain ordinance. Floodplain permits may be required for areas outside the jurisdiction of 404 and 310 permits, including dikes and levees.

D. The Park Conservation District (Park CD) is responsible for administering the Montana Natural Streambed and Land Preservation Act within Park County, also known as the 310 Law. The 310 Law is a state law requiring persons planning to work in or near a perennial stream or river on private or public land to first obtain a §310 permit from the local conservation district. The purpose of the 310 Law is to insure that projects on perennial streams will be carried out in ways that are not damaging to the stream or to adjoining landowners.

E. The Montana Department of Environmental Quality, Watershed Management and Water Quality Monitoring Sections of the Planning, Prevention and Assistance Division (DEQ) provides technical and financial assistance and work with land owners; conservation districts; watershed advisory groups; the U.S. Environmental Protection Agency and other state and federal land management and regulatory agencies to identify water quality, stream bank, and riparian zone problems, and to develop, evaluate, and assist in the implementation of Water Quality Restoration Plans (WQRPs). The DEQ provides financial and technical assistance for WQRPs that are developed and implemented by local landowners, conservation districts, water pollution control districts and watershed advisory groups. In addition, DEQ, Water Protection Bureau is responsible for implementing Section 401 of the Federal Clean Water Act (state law compliance certification) and for issuance of 3A Authorizations (temporary authorization to degrade) per the Montana Water Quality Act.

F. The Montana Department of Natural Resources and Conservation (DNRC)**,** Water Resources Division conducts technical investigations and research on water management, water supply, water use, water rights, and other water related concerns within watersheds, river basins, and reservoirs statewide. The DNRC Trust Lands Division is responsible for issuance of Montana Land Use License or Easement on Navigable Waters for alteration of the streambed and banks below ordinary high water, and DNRC's Floodplain Management Section is statutorily charged with designating floodplains for which political subdivisions (i.e., Park County and the City of Livingston) are to establish floodplain regulations.

G. The Omaha District of the U.S. Army Corps of Engineers, Regulatory Branch (Corps) implements Section 10 of the Rivers and Harbors Act (33 U.S.C. 403) and Section 404 of the Clean Water Act [(CWA), (33 U.S.C. 1344)]. Section 10 of the Rivers and Harbors Act prohibits the obstruction or alteration of navigable waters of the United States without a permit and Section 404 of the CWA requires a Department of Army permit for discharging dredged or fill material into waters of the United States including wetlands.

H. The Omaha District was directed by Congress to prepare a Special Area Management Plan (SAMP) for the Gardiner to Springdale, MT reach of the Yellowstone River. The Corps Regulatory Guidance Letter (RGL 86-10 see Attachment 1) defines SAMPs as comprehensive plans that provide for natural resource protection and reasonable economic growth within geographic areas of special sensitivity. A SAMP may result in appropriate local/state approvals and a Corps' general permit or abbreviated processing procedure for activities in specifically defined situations; and, a local/state restriction and/or an Environmental Protection Agency (EPA) 404(c) restriction for undesirable activities. An individual permit review may be conducted for activities that do not fall into either proceeding category.

I. The Task Force has formed a Technical Advisory Committee (TAC) to assist it in developing and coordinating an interdisciplinary scientific investigation to assess the cumulative (past, present and reasonably foreseeable future) effects of channel and floodplain modification on the physical, biological, and socioeconomic attributes of the upper Yellowstone River. The investigation is focused on determining effects of past system changes and developing analytical tools that allow estimation of potential future effects. The TAC provides a forum and administrative support for interaction and communication among investigators.

J. The scientific investigation endorsed by the Task Force consists of seven interrelated research components:

1. Watershed Conditions and Land Use
2. Geomorphic Analysis
3. Hydrology and Hydraulic Analysis
4. Riparian Trend Analysis
5. Fisheries Habitat and Population Analysis
6. Wildlife (Bird) Analysis
7. Socio-Economic Assessment

To the extent practicable, work products resulting from the individual research components have been developed so as to reflect influences of one particular ecosystem component on another. Attachment 2 is a schematic diagram depicting the relational nature of the individual research components. Attachment 3 lists work products associated with individual research components. Results of the integrated analyses are intended to provide a basis for the Task Force to develop river corridor management recommendations. The Lead Agencies will document the effects of existing and potential future channel and floodplain modifications through analysis of alternative channel management scenarios in full consideration of the Task Force's recommendations, if any. Timelines for completion of the data collection, synthesis and analysis is contained in Attachment 4. For purposes of the CEA, coordination and integration of individual study component results with other study component results is the responsibility of the Lead Agencies in consultation with the Cooperating Agencies.

III. Agreement

Pursuant to this Agreement, the Lead and Cooperating Agencies agree to the following:

A. It is the intent of the Lead Agencies to comply with the procedural, substantive, and public information requirements of the Montana Environmental Policy Act (MEPA) and National Environmental Policy Act (NEPA) and all other applicable laws and regulations. The Lead and Cooperating Agencies agree that the analysis and documentation prepared in compliance with these statutes will be a Cumulative Effects Assessment (CEA). The CEA will be prepared by the Lead Agencies and may be based, in part, on the results of the interdisciplinary studies endorsed by the Task Force and any other relevant information. The Work Plan for the CEA is outlined in Attachment 5.

B. The ultimate goal of this planning process is to provide a predictable regulatory process by detailing the requirements necessary to authorize channel and floodplain modifications along the

upper Yellowstone River. In order to accomplish this goal, evaluation of individual and cumulative impacts of alternative regulatory strategies is necessary.

C. To the extent that the Task Force's efforts to develop recommendations concerning river corridor management are consistent with the Corps' congressional mandate to prepare a SAMP, and the Lead Agencies overarching need to satisfy the substantive and procedural requirements of NEPA and MEPA, the Lead Agencies will incorporate Task Force recommendations specific to their individual statutory responsibilities as permitted by law. Executive Order 21-01 continues the Task Force until August 21, 2003 at which time the Task Force's executive authorization ceases unless extended. If the Task Force is not extended, and if the work described herein remains uncompleted, the Lead Agencies agree to continue to seek guidance and public input through the Park Conservation District. The Lead Agencies will consult with the Cooperating Agencies for necessary public information needs and coordination of public meetings including selection of meeting venues and public notification lists.

D. The Corps, commensurate with its responsibilities, is designated federal Lead Agency and will coordinate with cooperating/commenting federal agencies (e.g., NRCS, USEPA, USFWS, USFS, NPS). The Corps will insure that all applicable federal requirements, such as National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Endangered Species Act (ESA) are followed.

E. The DEQ and the DNRC are designated state Lead Agencies and will coordinate with commenting entities within state government (e.g., DEQ Permitting and Compliance Division; DNRC Trust Lands Division; DFWP Habitat Protection Bureau, MDT, etc.) The state Lead Agencies will insure that all applicable state requirements, such as the Montana Environmental Policy Act and the Montana Water Quality Act are followed.

F. The City of Livingston, Park County and the Park Conservation District are designated local Cooperating Agencies and will coordinate with other local agencies and entities. The local Cooperating Agencies will insure that all applicable local requirements such as the Montana Natural Streambed and Land Preservation Act and the Park County Floodplain Regulations are followed.

G. The Lead Agencies agree to communicate and coordinate fully with the Task Force and its TAC in developing the CEA and any subsequent regulatory program modifications. To facilitate and assure full coordination, the Lead Agencies, agree to actively participate in all interagency and TAC meetings to identify and resolve issues pertaining to development of the CEA and any resulting programmatic modifications. Further, the Lead Agencies agree to maximize communications with the Task Force and among agencies through designated Contacts (see Attachment 6). When EO 21-01 expires, continuance of the TAC is at the discretion of its members.

H. All preliminary data are considered draft. Any release of preliminary data to the public will be made only after prior notification of the contracting and servicing agencies or organizations in consultation with the Task Force and signatories to this agreement. Final work products resulting from the technical studies and any subsequent documents prepared pursuant to federal and state law will be made available through a variety of means. Electronic versions of research reports and other technical documents will be accessible on the Task Force and Park CD websites or through links back to originating research organizations or Lead Agencies. Prior to or concurrent with finalization of Lead Agency actions, hardcopies of documents, aerial photos and maps, as well as

digital information in the appropriate medium will be transferred to the Park Conservation District offices for archiving or future dissemination. The State Lead Agencies and local Cooperating Agencies at their own initiative may then transfer electronic information and GIS products through electronic data clearinghouses (e.g., Geographic Information and Analysis Center (GIAC) at Montana State University, Bozeman or the Natural Resources Information System (NRIS) at the Montana State Library). Links to these clearinghouses will be available through both the Task Force and the Park CD websites.

I. The Lead Agencies will strive to produce a concise CEA document, written in plain language, which clearly references all supporting materials developed by the cumulative effects investigation and provides full and fair discussion of significant environmental impacts and of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.

J. A Lead or Cooperating Agency may individually terminate this Agreement at any time upon 30 days written notice to the other Agencies. This Agreement will terminate 60 days after publication of the final Management Plan or in five years from the date of execution of this Agreement, whichever occurs earlier.

K. Lead Agency, TAC, and Task Force Contacts are contained in Attachment 6. If any changes in liaison occur, the other Lead Agencies and the Task Force will be promptly notified.

IV. Signatures

Date	Vicki Blakeman, Chair City of Livingston
Date	Edward Schilling, Chair Park County Commission
Date	David A. Haug, Chair Park Conservation District
Date	Art Compton, Division Administrator Dept. of Environmental Quality Planning, Prevention & Assistance Division
Date	Jack Stults, Division Administrator Dept. of Natural Resources And Conservation Water Resources Division
Date	Kathryn M. Schenk, P.E. Chief Regulatory Branch, Omaha District U.S. Army Corps of Engineers

Attachments:
1. RGL 86-10
2. Research Component Flow Chart
3. Study Work Products
4. Process Timeline
5. Cumulative Effects Assessment Work Plan
6. Contact List

Attachment "1"

RGL 86-10

US Army Corps of Engineers, Regulatory Guidance Letter 86-10

SUBJECT: Special Area Management Plans (SAMPS)

DATE: October 2, 1986 EXPIRES: December 31, 1988

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as "a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone." This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMPs are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

a. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products: 1) appropriate local/state approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and 2) a local/state restriction and/or an Environmental Protection Agency (EPA) 404(c) restriction (preferably both) for undesirable activities. An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do not assume that an environmental impact statement is automatically required to develop a SAMP.

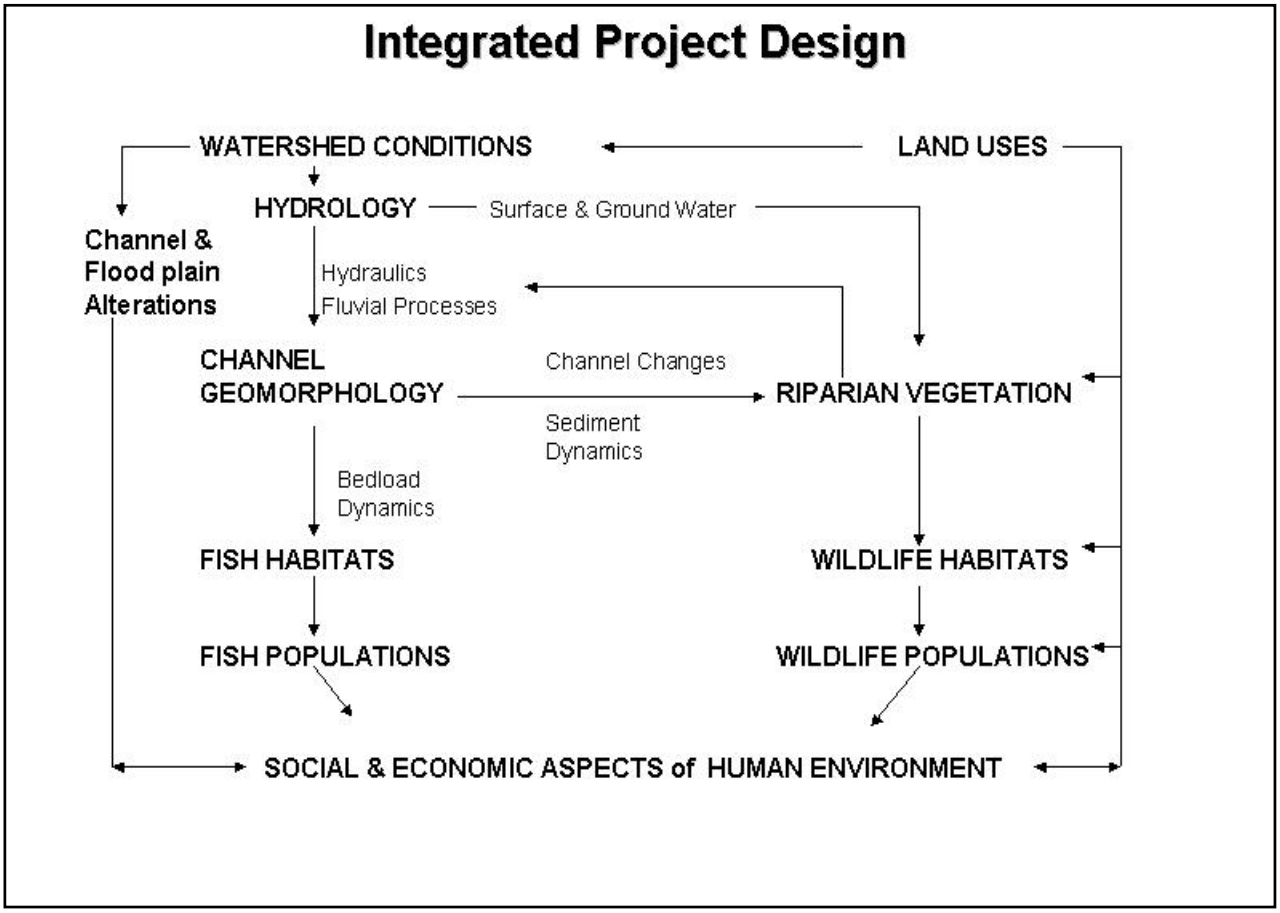
6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMPs. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4 above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

Attachment "2"

Integrated Project Design for the Upper Yellowstone River Cumulative Effects Investigation - This conceptual model, developed by the Task Force Technical Advisory Committee, shows the links amongst the seven interrelated components in the upper Yellowstone River investigation.



Attachment "3"

STUDY COMPONENT WORK PRODUCTS

1. **Watershed Conditions and Land Use:**

Yellowstone River Physical Features Inventory - hard copy or electronic published document.

National Wetland Inventory Mapping - 1:24,000-scale riparian, wetland and land cover data themes, color infrared aerial photos. Technical report with tables and digital mapping.

LandSat Watershed Land Use Assessment - Upper Yellowstone River Watershed 1999 Land Cover/Use Classification Report, and Watershed Land Cover/Use Assessment report, tables, maps.

Contour/Topographic Mapping - Digital Orthophotos from Gardiner to Springdale. Digital topographic maps of the river and floodplain from Point of Rocks to Mission Creek.

2. **Geomorphic Analysis:** Reconnaissance-level fluvial geomorphology, temporal geomorphology, channel classification of the upper Yellowstone River From Gardiner to Springdale, Montana. Technical report with associated mapping.

3. **Hydrology and Hydraulic Analyses:** Hydraulic modeling and floodplain mapping. Technical report with floodplain mapping themes.

4. **Riparian Trend Analysis:** Determine relationship between fluvial geomorphic processes and flood plain vegetation. Technical report with vegetation mapping themes.

5. **Fisheries Habitat and Population Analyses:** Effects of channel modification on fish habitat and comparative salmonid use of modified and natural habitats. Technical reports with habitat mapping /modeling.

6. **Wildlife (Bird) Analysis:** Evaluation of effects of riparian habitat dynamics on riparian avifauna, often used as indicators of habitat integrity for wildlife. Technical reports with habitat mapping /modeling.

7. **Socio-Economic Assessment:** Develop an economic portrait for the study area and provide a social assessment. Identify trends in economic and social values and conditions. Technical report.

ATTACHMENT "4"

Project Completion Timeline and Events Planning

2002

January February March April May June July August September October November December

INFORMATION GATHERING PERIOD

Develop MOA/MOU →

Hydrology Study analysis →

Geomorphology Study analysis → data collection → analysis →

Feb 25 SE Public Meeting #1

SE data collection/analysis →

April 27–30 CEA Workshop, Chico

Bird Study data collection → analysis →

Riparian Trend Study analysis → data collection → analysis →

Fish Hab Study data collection / analysis →

Fish Pop Study data collection / analysis →

August: SE Public Meeting #2

RESEARCH FINDINGS & PRESENTATIONS PERIOD

Research findings presentations →

9/02 Watershed Land Use

10/02 Socio-Economic

11/02 Hydrology

ATTACHMENT "4" continued

2003

January February March April May June July August September October November December

RESEARCH FINDINGS & PRESENTATIONS PERIOD

Research findings presentations ——→

1/03 Riparian Trend Analysis

1/03 Fish Populations Study

2/03 Fish Habitat Study

2/03 Bird Study

FINAL PROJECT PERIOD

Develop Recommendations ——→

Educational Workshops ——→

August 21: Recommendations to Governor due

Final Corps actions ——→ December 31
Other agencies actions
Monitoring Plan
Adaptive Management

Attachment "5"
Cumulative Effects Assessment Work Plan
(see CEQ, 1997: Considering Cumulative Effects Under the National Policy Act, Table 1-5)

EIA Components	CEA Steps
Scoping	**1. Identify the significant cumulative effects issues associated with the proposed action and define the assessment goals.** **2. Establish the geographic scope for the analysis.** **3. Establish the time frame for the analysis.** **4. Identify other actions affecting the resources, ecosystems, and human communities of concern.**
Describing the Affected Environment	**1. Characterize the resources, ecosystems, and human communities identified in scoping in terms of their response to change and capacity to withstand stresses.** **2. Characterize the stresses affecting these resources, ecosystems, and human communities and their relation to regulatory thresholds.** **3. Define a baseline condition for the resources, ecosystems, and human communities.**
Determining the Environmental Consequences	**1. Identify the important cause-and-effect relationships between human activities and resources, ecosystems, and human communities.** **2. Determine the magnitude and significance of cumulative effects.** **3. Modify or add alternatives to avoid, minimize, or mitigate significant cumulative effects.** **4. Monitor the cumulative effects of the selected alternative and adapt management.**

Attachment "6"
LIST OF CONTACTS

Liz Galli-Noble, Coordinator
Upper Yellowstone River Task Force
5242 Hwy 89 South
Livingston, MT 59047
(406) 222-3701

Amy Miller, Administrator
Park Co. Conservation District
5242 Hwy 89 South
Livingston, MT 59047
(406) 222-2899

Ellen Woodbury
Park County Planning Department
414 Calender
Livingston, MT 59047

Mike Gilbert, Project Manager
U.S. Army Corps of Engineers
Regulatory Branch
12565 West Center Road
Omaha, NE 68144
(406) 221-3057

Jim Woodhull
City of Livingston
Planning Department
414 Calender
Livingston, MT 59047

Allan Steinle, Chief
U.S. Army Corps of Engineers
Montana Field Office
10 West 15th Street, Suite 2200
Helena, MT 59626

Pat Newby, Water Quality Specialist
MT Dept. of Environmental Quality
Data Management Section
PO Box 200901
Helena, MT 59620-0901
(406) 444-5317

Jim Robinson, Water Resources Specialist
MT Dept. of Natural Resources
PO Box 201601
Helena, MT 59620-0901
(406) 444-4247